

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION

STEFANIE MARVIN, *et al.*,

*On Behalf Of Themselves And
All Others Similarly Situated,*

Plaintiffs,

v.

KIA AMERICA, INC., *et al.*

Defendants.

Case No.: 2:21-cv-01146-PP

PLAINTIFFS' MOTION TO TAKE JUDICIAL NOTICE

NOW COME Plaintiffs, Stefanie Marvin, Katherine Wargin, Chaid Przybelski, Chad Just, Amy Flasch, and Lydia Davis, on behalf of themselves and others similarly situated (collectively, "Plaintiffs"), by and through their attorneys, Barton Legal S.C., and respectfully move the Court to take judicial notice of the following publicly available sources of information pursuant to Fed. R. Evid. 201. In support of this motion, Plaintiffs state as follows:

LEGAL STANDARD

1. Judicial notice of adjudicative facts may be taken any time during the proceedings. Fed. R. Evid. 201. Courts frequently take judicial notice of press coverage that bears on a party's pleadings in connection with a motion to dismiss. *See, e.g., Cook Cty. Republican Party v. Pritzker*, 487 F. Supp. 3d 705, 713 n.3 (N.D. Ill. 2020) (taking judicial notice of several articles describing absentee voter fraud "because their existence is '(1) not subject to reasonable dispute and (2) either generally known within the territorial jurisdiction or capable of accurate and ready determination through sources whose accuracy cannot be questioned'" (quoting *Ennenga v. Starns*, 677 F.3d 766, 773-74

(7th Cir. 2012)); *see also* *U.S. ex rel. John v. Hastert*, 82 F. Supp. 3d 750, 764 (N.D. Ill. 2015) (taking judicial notice of *Chicago Tribune* articles “to conclude that the information contained in John’s complaint has previously been publicly disclosed and was in the public realm”) (collecting cases).

2. Properly applied, the court is taking judicial notice of the fact that the statements were made in the public domain, not for the truth of each statement. *See, e.g., Ark. Pub. Emps. Ret. Sys. v. Bristol-Myers Squibb Co.*, 28 F.4th 343, 352 (2d Cir. 2022) (“[I]t is proper to take judicial notice of the fact that press coverage, prior lawsuits, or regulatory filings contained certain information, without regard to the truth of their contents[.]”) (quoting *Staehr v. Hartford Fin. Servs. Grp., Inc.*, 547 F.3d 406, 425 (2d Cir. 2008)); *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (“Courts may take judicial notice of publications introduced to ‘indicate what was in the public realm at the time, not whether the contents of those articles were in fact true.’”) (quoting *Premier Growth Fund v. Alliance Capital Mgmt.*, 435 F.3d 396, 401 n.15 (3d Cir. 2006) (collecting cases)).¹

PROCEDURAL POSTURE

3. On June 23, 2021, Plaintiffs Stefanie Marvin and Katherine Wargin filed an action against Defendants in the Milwaukee County Circuit Court (the “State Court Action”), which was subsequently removed to this Court on October 5, 2021. (*See* Dkt. # 1.)

4. On October 8, 2021, the parties stipulated to a schedule that set: (i) a November 4,

¹ *Accord Farah v. Esquire Mag.*, 736 F.3d 528, 534 (D.C. Cir. 2013) (“Judicial notice is properly taken of publicly available historical articles such as were attached to Esquire’s motions to dismiss.”) (citing Fed. R. Evid. 201) (collecting cases); *see also* *U.S. ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805, 812 n.4 (11th Cir. 2015) (explaining that “courts may take judicial notice of documents such as the newspaper articles at issue here for the limited purpose of determining which statements the documents contain (but not for determining the truth of those statements)”) (citations omitted); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 568 n.13 (2007) (citing Fed. R. Evid. 201 to affirm that district court was entitled to take judicial notice of the full contents of certain newspaper articles referenced in plaintiff’s complaint, from which the truncated quotations of the defendant’s CEO were taken and referenced in the pleadings).

2021 deadline by which Plaintiffs would file an Amended Complaint (“FAC”); (ii) a briefing scheduling on Defendants’ motion to dismiss the FAC; and (iii) a briefing schedule to address the scope and extent of any redactions to the FAC. (See Dkt. # 3.)

5. Pursuant to this schedule, the FAC was filed on November 4, 2021, which added new plaintiffs to the suit, raised additional claims for which Plaintiffs sought to hold Defendants liable, and cited to numerous sources of information—including NHTSA records, news articles, social media links, and publicly-available crime data—to demonstrate, *inter alia*, both the magnitude of the problem and Defendants’ actual and/or constructive knowledge about it. (See Dkt. # 12-1.)

PUBLICLY AVAILABLE INFORMATION TO BE JUDICIALLY NOTICED

6. Since that time, various media outlets—in Wisconsin and elsewhere throughout the country—have reported on the proliferation of auto thefts involving Kias and Hyundais containing the Defect.² Because these publicly available sources bear on the FAC and Defendants’ pending motion to dismiss, Plaintiffs respectfully request the Court to take judicial notice of the following materials, which are referenced and attached to the Declaration of James Barton (“Barton Decl.”) submitted in connection herewith:

A. The NICB’s 2021 “Hot Wheels” Report

7. On July 19, 2022, the NICB released its 2021 Hot Wheels report that catalogues, *inter alia*, the most stolen cars by state, (see, e.g., FAC, Dkt. # 12-1, ¶¶ 212–34 (describing and citing to the Hot Wheels Reports that were publicly available as of the filing of the FAC)), and which corroborates the “epidemic” sieging Wisconsin communities driven by the ease with which the Class Vehicles are being stolen:

² See Dkt. # 12-1, ¶¶ 89–156 (defining the Defect and identifying the Class Vehicles affected by it).

Wisconsin	1	Hyundai Elantra	2017	1,006
Wisconsin	2	Hyundai Sonata	2015	898
Wisconsin	3	Kia Motors Corporation Optima	2019	627
Wisconsin	4	Kia Motors Corporation Forte	2019	569
Wisconsin	5	Kia Motors Corporation Sportage	2020	512
Wisconsin	6	Hyundai Tucson	2018	374
Wisconsin	7	Kia Motors Corporation Soul	2020	367
Wisconsin	8	Honda Civic	2000	347
Wisconsin	9	Chevrolet Pick-Up (Full Size)	2007	266
Wisconsin	10	Honda Accord	1997	263

(Barton Decl., ¶ 2, Ex. 1.)³

B. The Kia Boyz Documentary Foreshadowing A “Bloody Summer”

8. On May 31, 2022, a Milwaukee resident named Tommy McGee posted a video on his YouTube channel entitled “*Kia Boys Documentary (A Story of Teenage Car Theft)*,” in which he documented the city’s car theft epidemic through various interviews with several Kia Boys, amongst others. The documentary, which can be viewed at https://www.youtube.com/watch?v=fbTrLyqL_nw, (see Barton Decl., ¶ 3), was immediately reported on by various media outlets. See, e.g., Nick VanWagenen, “*Kia Boys documentary goes behind the scenes of Milwaukee’s car theft, reckless driving crisis*,” TMJ4 WTMJ-TV MILWAUKEE (June 2, 2022),⁴ attached as **Exhibit 2** to the Barton Declaration; see also Cassidy Williams, “*Kia Boys YouTube documentary, Milwaukee police call it ‘disturbing’*,” Fox 6 News Milwaukee (June 1, 2022),⁵ attached as **Exhibit 3** to the Barton Declaration.

9. As Fox 6 News reported, the documentary prompted an immediate investigation by the MPD because the Kia Boys interviewed in the documentary were “brazen about violence,” one of whom foreshadowed the consequences attendant to how easy the Class Vehicles can be stolen: “*Stay dangerous. It’s going to be a bloody summer. A lot of (expletive) are going to die.*” (See *id.*)

³ Available at: <https://www.nicb.org/news/news-releases/chevrolet-and-ford-full-size-pick-ups-most-stolen-vehicles-second-year-row>.

⁴ Available at: <https://wtmj.com/news/2022/06/02/kia-boys-documentary-goes-behind-the-scenes-of-milwaukees-car-theft-reckless-driving-crisis/>

⁵ Available at: <https://www.fox6now.com/news/kia-boys-youtube-documentary-milwaukee-police-call-it-disturbing>

10. At least one of the teens interviewed was then criminally charged, as Fox 6 News reported weeks later. See Digital Team, “Kia Boys YouTube documentary; Teen featured in video now charged,” Fox 6 News Milwaukee (June 28, 2022),⁶ attached as **Exhibit 4** to the Barton Declaration.

C. Other Media Outlets Reporting On The Skyrocketing Thefts Of Class Vehicles

11. As the FAC details, the ease with which Defendants’ Class Vehicles can be stolen went viral on social media, providing encouragement and know-how for other teenagers to steal these cars. (See Dkt. # 12-1, ¶¶ 266-73.) Unfortunately, this problem has now proliferated beyond Wisconsin’s borders, as various media outlets have reported:

- “TikTok ‘Kia Challenge’ fuels rise in using USB cables to steal cars,” INSIDER (Jul 30, 2022, 11:18 PM),⁷ attached as **Exhibit 5** to the Barton Declaration.
- “TikTok trend blamed for spike in car thefts. These brands are being targeted the most,” MIAMI HERALD (July 25, 2022, 2:28 PM),⁸ attached as **Exhibit 6** to the Barton Declaration.
- “Kia and Hyundai Cars Stolen at Alarming Rates Using USB Cables Because of TikTok ‘Kia Challenge,’” MOTOR BISCUIT (July 27, 2022),⁹ attached as **Exhibit 7** to the Barton Declaration.

12. Consequently, municipalities throughout the country have seen a marked increase in the thefts of Defendants’ Class Vehicles, including in the following states:

- **Florida:** Anna Mapp, “40% of cars stolen in 2 weeks are Kias, Hyundais, St. Pete police say,” NBC 8 WFLA, (last updated July 28, 2022, 7:50 AM),¹⁰ attached as **Exhibit 8** to the Barton Declaration.
- **Georgia:** Savannah Louie, “Teen ‘Kia Boyz’ thieves target Kia, Hyundai cars in Atlanta, CBS46 Atlanta, (last updated July 20, 2022, 5:51 PM),¹¹ attached as **Exhibit 9** to the Barton Declaration.
- **Illinois:** Shanzeh Ahmad, “‘Dramatic rise’ in Kia and Hyundai thefts spurs warning from

⁶ Available at: <https://www.fox6now.com/news/kia-boys-youtube-documentary-teen-charged>

⁷ Available at: <https://www.insider.com/tiktok-kia-challenge-using-usb-cables-to-steal-cars-2022-7>

⁸ Available at: <https://www.miamiherald.com/news/nation-world/national/article263801328.html>

⁹ Available at: <https://www.motorbiscuit.com/kia-hyundai-cars-stolen-alarming-rate-using-usb-cables-tiktok-kia-challenge/>

¹⁰ Available at: <https://www.wfla.com/news/pinellas-county/kia-hyundai-thefts-on-rise-in-st-petersburg-police-say/>

¹¹ Available at: <https://www.cbs46.com/2022/07/20/teen-kia-boyz-thieves-target-kia-hyundai-cars-atlanta/>

Cook County sheriff, Chicago Tribune (last updated Aug. 16, 2022, 4:05 pm),¹² attached as **Exhibit 10** to the Barton Declaration.

- **Michigan:** Michael Kransz, “Stolen Kia, Hyundai vehicles recovered daily by Grand Rapids police,” MLIVE, (July 15, 2022, 4:54 PM),¹³ attached as **Exhibit 11** to the Barton Declaration.
- **Minnesota:** Rose Schmidt, “St. Paul PD: Kia thefts up 1,300%, Hyundai thefts up 584% in 2022,” Fox 9 KMSP (last updated July 18, 2022, 10:41 PM),¹⁴ attached as **Exhibit 12** to the Barton Declaration.
- **Missouri:** Christine Byers, “Surging Hyundai and Kia thefts causing Club shortage,” NBC 5 KSDK Aug. 1, 2022),¹⁵ attached as **Exhibit 13** to the Barton Declaration.
- **Ohio:** Mark Feuerborn & Allen Henry, “Where Kia and Hyundai cars are stolen in Columbus,” NBC 4 WCMH (last updated Aug. 3, 2022, 9:19 AM),¹⁶ attached as **Exhibit 14** to the Barton Declaration.

13. And just as in Milwaukee, people are being injured and killed as a foreseeable consequence of the Defect given the ease with which the Class Vehicles can be stolen:

- Pauleen Le, “Woman in her 70s killed in hit-and-run crash involving stolen vehicle in St. Paul,” CBS NEWS MINNESOTA (July 18, 2022, 9:20 AM),¹⁷ attached as **Exhibit 15** to the Barton Declaration.
- 10TV Web Staff, “Report, Teens involved in deadly stolen-vehicle crash driving 80 mph,” 10 WBNS (July 27, 2022, 8:49 PM),¹⁸ attached as **Exhibit 16** to the Barton Declaration.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court take judicial notice of the publicly available information cited and referenced herein.

¹² Available at: <https://www.chicagotribune.com/news/breaking/ct-kia-hyundai-car-thefts-cook-county-sheriff-warning-20220816-fyxwjn5n2zhx7khuxoft4pglfe-story.html>

¹³ Available at: <https://www.mlive.com/news/grand-rapids/2022/07/stolen-kia-hyundai-vehicles-recovered-daily-by-grand-rapids-police.html>

¹⁴ Available at: <https://www.fox9.com/news/st-paul-pd-kia-thefts-up-1300-hyundai-thefts-up-584-in-2022>

¹⁵ Available at: <https://www.ksdk.com/article/news/investigations/surging-hyundai-kia-thefts-steering-wheel-lock-club-shortage/63-e4e17ce8-37b7-4497-b6d6-db8dc0d6ee9d>

¹⁶ Available at: <https://www.nbc4i.com/news/local-news/columbus/where-kia-and-hyundai-cars-are-stolen-in-columbus/>

¹⁷ Available at: <https://www.cbsnews.com/minnesota/news/st-paul-stolen-vehicle-hit-and-run-woman-70s-killed/>

¹⁸ Available at: <https://www.10tv.com/article/news/crime/teens-deadly-columbus-crash/530-5def8e60-2e5f45ea-93ee-050554dea9db>

CERTIFICATION UNDER CIVIL L.R. 7(a)(2)

Pursuant to Civil L.R. 7(a)(2), the undersigned certifies that except for the Barton Declaration filed in connection with this motion, no supporting memorandum is being submitted herewith.

Dated this 23rd day of August, 2022.

BARTON LEGAL S.C.

/s/ Electronically Signed By James B. Barton

James B. Barton

Email: jbb@bartonlegalsc.com

Joshua S. Greenberg

Email: jsg@bartonlegalsc.com

313 North Plankinton Ave., Ste. 207

Milwaukee, WI 53203

T: (414) 877-0690

F: (414) 877-3039

*Counsel for Plaintiffs, Stefanie Marvin,
Katherine Wargin, Chaid Przybelski,
Chad Just, Amy Flasch, Lydia Davis,
and the Proposed Class*